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BEFORE THE
PHYSICIAN ASSISTANT BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **Joseph Essex Rojo, P.A.** **1054 Camino Del Cerritos** **San Dimas, California 91773** **Physician Assistant License No. PA 15905,** Respondent.	Case No. 950-2016-001035 **ACCUSATION**

Complainant alleges:

PARTIES

1. Maureen L. Forsyth (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Physician Assistant Board, Department of Consumer Affairs.

2. On or about July 10, 2001, the Physician Assistant Board issued Physician Assistant License Number PA 15905 to Joseph Essex Rojo, P.A. (Respondent). The Physician Assistant License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2019, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board under the authority of the following provisions of the California Business and Professions Code (Code) unless otherwise indicated.

4. Section 3527 of the Code states:

"(a) The board may order the denial of an application for, or the issuance subject to terms and conditions of, or the suspension or revocation of, or the imposition of probationary conditions upon a physician assistant license after a hearing as required in Section 3528 for unprofessional conduct that includes, but is not limited to, a violation of this chapter, a violation of the Medical Practice Act, or a violation of the regulations adopted by the board or the Medical Board of California.

"...

"(f) The board may order the licensee to pay the costs of monitoring the probationary conditions imposed on the license.

"(g) The expiration, cancellation, forfeiture, or suspension of a physician assistant license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license."

5. California Code of Regulations, title 16, section 1399.521 states:

"In addition to the grounds set forth in section 3527, subdivision (a), of the Code, the board may deny, issue subject to terms and conditions, suspend, revoke or place on probation a physician assistant for the following causes: (a) Any violation of the State Medical Practice Act which would constitute unprofessional conduct for a physician and surgeon..."

6. Section 2227 of the Code states:

"(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default

has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

"(1) Have his or her license revoked upon order of the board.

"(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

"(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

"(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

"(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

"(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1."

7. Section 2234 of the Code, states:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

"(d) Incompetence.

"(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

"(f) Any action or conduct which would have warranted the denial of a certificate.

"(g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.

"(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board of the certificate holder and the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board."

8. Section 2241 of the Code states:

"(a) A physician and surgeon may prescribe, dispense, or administer prescription drugs, including prescription controlled substances, to an addict under his or her treatment for a purpose other than maintenance on, or detoxification from, prescription drugs or controlled substances.

"(b) A physician and surgeon may prescribe, dispense, or administer prescription drugs or prescription controlled substances to an addict for purposes of maintenance on, or detoxification from, prescription drugs or controlled substances only as set forth in subdivision (c) or in Sections 11215, 11217, 11217.5, 11218, 11219, and 11220 of the Health and Safety Code. Nothing in this subdivision shall authorize a physician and surgeon to prescribe, dispense, or administer

dangerous drugs or controlled substances to a person he or she knows or reasonably believes is using or will use the drugs or substances for a nonmedical purpose.

"(c) Notwithstanding subdivision (a), prescription drugs or controlled substances may also be administered or applied by a physician and surgeon, or by a registered nurse acting under his or her instruction and supervision, under the following circumstances:

"(1) Emergency treatment of a patient whose addiction is complicated by the presence of incurable disease, acute accident, illness, or injury, or the infirmities attendant upon age.

"(2) Treatment of addicts in state-licensed institutions where the patient is kept under restraint and control, or in city or county jails or state prisons.

"(3) Treatment of addicts as provided for by Section 11217.5 of the Health and Safety Code.

"(d)(1) For purposes of this section and Section 2241.5, "addict" means a person whose actions are characterized by craving in combination with one or more of the following:

"(A) Impaired control over drug use.

"(B) Compulsive use.

"(C) Continued use despite harm.

"(2) Notwithstanding paragraph (1), a person whose drug-seeking behavior is primarily due to the inadequate control of pain is not an addict within the meaning of this section or Section 2241.5."

9. Section 2242 of the Code states:

"(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without an appropriate prior examination and a medical indication, constitutes unprofessional conduct.

"(b) No licensee shall be found to have committed unprofessional conduct within the meaning of this section if, at the time the drugs were prescribed, dispensed, or furnished, any of the following applies:

"(1) The licensee was a designated physician and surgeon or podiatrist serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and if the drugs

were prescribed, dispensed, or furnished only as necessary to maintain the patient until the return of his or her practitioner, but in any case no longer than 72 hours.

"(2) The licensee transmitted the order for the drugs to a registered nurse or to a licensed vocational nurse in an inpatient facility, and if both of the following conditions exist:

"(A) The practitioner had consulted with the registered nurse or licensed vocational nurse who had reviewed the patient's records.

"(B) The practitioner was designated as the practitioner to serve in the absence of the patient's physician and surgeon or podiatrist, as the case may be.

"(3) The licensee was a designated practitioner serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and was in possession of or had utilized the patient's records and ordered the renewal of a medically indicated prescription for an amount not exceeding the original prescription in strength or amount or for more than one refill.

"(4) The licensee was acting in accordance with Section 120582 of the Health and Safety Code."

10. Section 2266 of the Code states: The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct.

11. Section 725 of the Code states:

"(a) Repeated acts of clearly excessive prescribing, furnishing, dispensing, or administering of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of the community of licensees is unprofessional conduct for a physician and surgeon, dentist, podiatrist, psychologist, physical therapist, chiropractor, optometrist, speech-language pathologist, or audiologist.

"(b) Any person who engages in repeated acts of clearly excessive prescribing or administering of drugs or treatment is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100) nor more than six hundred dollars ($600), or by

imprisonment for a term of not less than 60 days nor more than 180 days, or by both that fine and imprisonment.

"(c) A practitioner who has a medical basis for prescribing, furnishing, dispensing, or administering dangerous drugs or prescription controlled substances shall not be subject to disciplinary action or prosecution under this section.

"(d) No physician and surgeon shall be subject to disciplinary action pursuant to this section for treating intractable pain in compliance with Section 2241.5."

12. Section 3502 of the Code states in pertinent part:

"(a) Notwithstanding any other provision of law, a physician assistant may perform those medical services as set forth by the regulations of the board when the services are rendered under the supervision of a licensed physician and surgeon or of physicians and surgeons approved by the board, except as provided in Section 3502.5.

"..."

13. Section 3502.1, subdivision (c)(2) of the Code states:

"A physician assistant shall not administer, provide or issue a drug order for Schedule II through Schedule V controlled substances without advance approval by a supervising physician and surgeon for that particular patient . . ."

14. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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FIRST CAUSE FOR DISCIPLINE

(Repeated Negligent Acts- 3 Patients)

15. Respondent is subject to disciplinary action under section 2234, subdivision (c), of the Code in that he committed repeated negligent acts in his care of Patients 1 through 3.[1] The circumstances are as follows:

Patient 1

16. Patient 1 (or "patient") is a forty-eight- year-old female who treated with Respondent from about 2013 through 2017.[2] Patient 1 had been treating with Respondent for various conditions, but primarily for chronic pain. Respondent prescribed oral narcotics (such as Promethazine with Codeine and Alprazolam) and muscle relaxants to Patient 1.[3]

17. Respondent had been prescribing controlled substances to Patient 1 (presumably for chronic pain) for a protracted period of time. Prior examination and indication for Promethazine with Codeine and Alprazolam were poorly documented. The medical record demonstrated limited examination, laboratory testing, and imaging studies.

18. Respondent failed to include a complete pain assessment. Functional status, detailed exam findings in the areas of reported pain, previous diagnostic evaluation and prior treatment were poorly documented. Respondent also failed to develop a comprehensive treatment plan. Pain and functional goals, maximization of non-narcotic therapy and nonpharmacologic management were not evident.

19. There was no documentation that Respondent utilized rehabilitation programs, obesity management, physical therapy or specialty referrals. Although laboratory and imaging studies were performed, Respondent did not address the patient's abnormal liver function tests or

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[1] The patients are identified numerically to protect their privacy.

[2] These are approximate dates, based on the records available. The patient may have also treated with Respondent before and after these dates.

[3] A number of other clinicians had also been prescribing controlled substances to Patient 1 during the time she was treating with Respondent.

abnormal MRI results. Controlled substances were refilled on a regular basis without evidence of complete periodic review, attempts to taper narcotics or assess the appropriateness for continued use of the narcotics. CURES review, informed consent, narcotic contract, and urine drug testing were not evident in the medical record.

20. Respondent's medical record-keeping was illegible and incomplete. Missing items included details of past history, prior work-up, consultations, interval medication reconciliation, patient compliance with treatment plan and health care maintenance. There was also poor medical record documentation regarding physician supervision. These acts and omissions in the treatment of Patient 1 constituted simple departures from the standard of care.

Patient 2

21. Patient 2 (or "patient") is a fifty-three-year-old male who treated with Respondent from about 2013 through 2017.[4] Patient 2 had been treating with Respondent for primary care, management of chronic medical conditions, management of chronic pain syndrome, and medication refills. Respondent prescribed high doses of oral narcotics such as Phenobarbital, NSAIDS, and Oxycontin to Patient 2 during this time period.

22. Respondent prescribed controlled substances to Patient 2 for chronic pain and seizure disorder for a protracted period of time. As with Patient 1, above, the medical record for Patient 2 demonstrated limited examination, laboratory testing, and imaging studies. Respondent failed to include a complete pain assessment. Functional status, detailed exam findings in the areas of reported pain, previous diagnostic evaluation and prior treatment were poorly documented. Respondent also failed to develop a comprehensive treatment plan. Pain and functional goals, maximization of non-narcotic therapy and nonpharmacologic management were not included.

[4] Again, these are approximate dates, based on the records available. The patient may have also treated with Respondent before and after these dates.

23. There was no documentation that Respondent utilized rehabilitation programs, physical therapy or specialty referrals. Although laboratory and imaging studies were performed, there was no documentation that Respondent addressed Patient 2's abnormal MRI results. Controlled substances were refilled on a regular basis without evidence of complete periodic review, attempts to taper high dose narcotics or assess the appropriateness for continued use of the narcotics. CURES review, informed consent, narcotic contract, and urine drug testing were not evident in the medical record.

24. Again, Respondent's medical record-keeping for Patient 2 was illegible and incomplete. Missing items included details of past history, prior work-up, consultations, interval medication reconciliation, patient compliance with treatment plan and health care maintenance. There was also poor medical record documentation regarding physician supervision. These acts and omissions in the treatment of Patient 2 constituted simple departures from the standard of care.

Patient 3

25. Patient 3 (or "patient") is a seventy-three year-old male who treated with Respondent from about 2013 through 2017.[5] Patient 3 had various chronic medical conditions and had been treating with Respondent for primary care, management of chronic medical conditions, management of chronic pain syndrome, and medication refills. Respondent prescribed NSAIDS, and other controlled substances to Patient 3 such as Neurontin and antidepressants, Oxycodone, and Fentanyl.[6]

26. As with the other patients mentioned above, Respondent had been prescribing

[5] As with the other patients mentioned herein, these are approximate dates, based on the records available. The patient may have also treated with Respondent before and after these dates.

[6] As with Patient 1, a number of other clinicians had also been prescribing controlled substances to Patient 3 during the time he was treating with Respondent.

controlled substances to Patient 3 for a protracted period of time (presumably for chronic pain disorder). The medical record demonstrated limited examination, laboratory testing, imaging studies, and orthopedic surgery consultation.

27. Again, Respondent failed to include a complete pain assessment for Patient 3. Functional status, detailed exam findings in the areas of reported pain, previous diagnostic evaluation and prior treatment were poorly documented. Respondent also failed to develop a comprehensive treatment plan. Pain and functional goals, maximization of non-narcotic therapy and nonpharmacologic management were not evident.

28. There was no documentation that Respondent utilized rehabilitation programs, obesity management, physical therapy or pain management referral. Although laboratory and imaging studies were performed, Respondent did not address the patient's abnormal renal function and carotid stenosis. Controlled substances were refilled on a regular basis without evidence of complete periodic review, attempts to taper opiates or assess the appropriateness for continued use of the opiates. Indication for narcotic dose escalation, transdermal Fentanyl use was poorly documented. CURES review, informed consent, and urine drug testing were not evident in the medical record. Risks of chronic NSAID use in the setting of chronic kidney disease was not addressed.

29. Respondent's medical record-keeping for Patient 3 was also illegible and incomplete. Missing items included details of past history, prior work-up, consultations, interval medication reconciliation, patient compliance with treatment plan and health care maintenance. There was also poor medical record documentation regarding physician supervision and care coordination with other providers. These acts and omissions in the treatment of Patient 3 constituted simple departures from the standard of care.

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SECOND CAUSE FOR DISCIPLINE

(Prescribing Without Exam/Indication- 3 Patients)

30. By reason of the facts and allegations set forth in the First Cause for Discipline above, Respondent is subject to disciplinary action under section 2242 of the Code, in that Respondent prescribed dangerous drugs to Patients 1 through 3 without an appropriate prior examination or medical indication therefor.

THIRD CAUSE FOR DISCIPLINE

(Excessive Prescribing- 3 Patients)

31. By reason of the facts and allegations set forth in the First Cause for Discipline above, Respondent is subject to disciplinary action under section 725 of the Code, in that Respondent excessively prescribed dangerous drugs to Patients 1 through 3.

FOURTH CAUSE FOR DISCIPLINE

(Inadequate Records- 3 Patients)

32. By reason of the facts and allegations set forth in the First Cause for Discipline above, Respondent is subject to disciplinary action under section 2266 of the Code, in that Respondent failed to maintain adequate and accurate records of his care and treatment of Patients 1 through 3.

FIFTH CAUSE FOR DISCIPLINE

(Providing Medical Services Without Adequate Supervision-3 Patients)

33. By reason of the facts set forth in the First Cause for Discipline, Respondent is subject to disciplinary action under section 3502, subdivision (a) of the Code in that he provided medical services to Patients 1 through 3 without adequate supervision. There is no documentation in the progress notes that Respondent ever discussed Patients 1 through 3's prescriptions or any other aspects of patient care with a supervising physician.

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SIXTH CAUSE FOR DISCIPLINE

(Administration of Controlled Substances Without Advance Approval By a Supervising Physician- 3 Patients)

34. By reason of the facts set forth in the First Cause for Discipline, Respondent is subject to disciplinary action under section 3502.1, subdivision (c)(2) of the Code for prescribing/administering controlled substances to Patients 1 through 3 without advance approval of a supervising physician.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Physician Assistant Board issue a decision:

1. Revoking or suspending Physician Assistant License Number 15905, issued to Joseph Essex Rojo, PA;

2. Ordering Joseph Essex Rojo, P.A. to pay the Physician Assistant Board the costs of probation (if placed on probation), and the costs of investigation and enforcement, pursuant to Business and Professions Code section 125.3;

3. Ordering Joseph Essex Rojo, P.A. to pay fines and other penalties, pursuant to Business and Professions Code section 725; and

4. Taking such other and further action as deemed necessary and proper.

DATED: March 16, 2018

MAUREEN L. FORSYTH
Executive Officer
Physician Assistant Board
Department of Consumer Affairs
State of California
Complainant

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